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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re D.W., a Person Coming Under the
Juvenile Court Law.

H033181
(Santa Cruz County
Super. Ct. No. DP001516)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

V.C.,

Defendant and Appellant.

Appellant Victoria, mother of Debbie¹ appeals from a Juvenile Court Order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26.² The Santa Cruz County Human Resources Agency (Agency) took Debbie into protective custody after Victoria, who had a long history of drug abuse and related criminal activity

¹ By separate order issued this day, this court has ordered that appellant mother and the child be referred to by the above listed fictitious names in order to adequately protect their confidentiality.

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

was arrested. Although Victoria suggested that Debbie be placed with Victoria's mother, the Agency rejected the placement because Victoria's mother had her own criminal and child welfare history. Instead, the court placed Debbie with the same family who had adopted Victoria's younger brother (Debbie's uncle).

Although the juvenile court initially ordered reunification services, after Victoria failed to make consistent progress, the court terminated services for her at the six-month review hearing. The court set a section 366.26 hearing after it terminated services for Debbie's father at the 18-month review hearing. At this contested hearing, the court adopted the Agency's recommendation and terminated Victoria's parental rights. This timely appeal ensued. We appointed counsel to represent appellant in this court.

Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. (*In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*)). In the opening brief, counsel acknowledged that this court has no duty to independently review the record pursuant to *People v. Wende*,³ but requested that we allow appellant the opportunity to submit a brief in propria persona pursuant to *Conservatorship of Ben C.*, (2007) 40 Cal.4th 529, 543, 544 (*Ben C.*).

In *In re Sara H.* (1997) 52 Cal.App.4th 198 (*Sara H.*), analyzing the Supreme Court's reasoning in *Sade C.*, we held that the proper course of action in a juvenile dependency case, where counsel finds no meritorious appellate issue upon scrutiny of the record, is to deem the appeal abandoned and to dismiss it. (*Id.* at pp. 201-202.) We held that we do not have discretion to review the record, under any circumstance. (*Id.* at p. 201.) The two foundational principals underlying the holdings in both *Sara H.* and *Sade C.* are the need for speedy resolutions in dependency cases, and the recognition that independent review of the record causes intolerable delay. (*Ibid.*) Despite these holdings, appellant's counsel urges us to adopt the procedure articulated in *Ben C.* In

³ *People v. Wende* (1979) 25 Cal.3d 436.

Ben C. the Supreme Court held that where counsel has filed a no issue brief in a conservatorship proceeding, before dismissing the appeal as abandoned, the appellant should have the opportunity to submit a supplemental letter brief in propria persona. (*Ben C.*, supra, 40 Cal.4th at p. 544, fn. 6.)

Although *Ben C.* was a conservatorship proceeding, the rights implicated in a dependency proceeding are, at least, equally fundamental. Further, in the past, where counsel in a dependency case was preparing to file a “no issue” letter pursuant to *Sade C.*, we have allowed the appellant to file a motion to vacate the appointment of counsel so that they could file a brief in propria persona. We have often granted these motions, recognizing the fundamental nature of the rights at stake in dependency appeals as well as the due process implications of allowing an appellant adequate access to the appellate court.

Realistically, the process of allowing the appellant to file a motion to vacate counsel’s appointment and then file a supplemental brief, as we have done in the past, would likely take as long if not longer than directly notifying the appellant that he has the right to file a supplemental brief. Therefore, there is no actual prejudice to the dependent child due to any delay caused by allowing the appellant an opportunity to file a supplemental brief in propria persona. In balancing the due process interests of the appellant with the child’s need for expeditious finality, we find that appellant should be afforded an opportunity to file a supplemental letter brief in propria persona.

Based on this conclusion, we notified appellant of her right to submit written argument in her own behalf within 30 days. That period has elapsed and we have received no written argument from her. Respondent requests that we dismiss the appeal.

The appellant having failed to raise any issue on appeal, the appeal must be dismissed as abandoned. (*Ben C.*, supra, 40 Cal.4th 529; *Sade C.*, supra, 13 Cal.4th 952.)

DISPOSITION

The appeal is dismissed as abandoned.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.